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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,171	01/15/2004	Allyn Hubbard	B1102.70015US01	1143
23628 7590 09/17/2007 WOLF GREENFIELD & SACKS, P.C. 600 ATLANTIC AVENUE BOSTON, MA 02210-2206			EXAMINER GORDON, BRIAN R	
			ART UNIT 1743	PAPER NUMBER
			MAIL DATE 09/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/760,171

Applicant(s)

HUBBARD ET AL.

Examiner

Brian R. Gordon

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1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-54 is/are allowed.
- 6) ☒ Claim(s) 55-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 55-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takase et al. (EPA 0,417,305 A1).

Takase et al. disclose an apparatus for performing assays substantially as claimed. The apparatus comprises an axially rotatable substrate 101 having a plurality of radially-arrayed reaction sites 102, 104 means for rotating and controlling the rotation of substrate 101, a fluid dispenser 7 or nozzle 9 for conveying fluid to reaction sites (column 13, lines 53-57), a readout device 11 for reading reactions at reaction sites/marks, means 19 for identifying the reactions sites (figures 1, 2, and 9-11).

Takase et al. disclose the claimed invention except for a fluid dispenser which is adapted to convey an amount less than 0.5 microliters to the reaction sites and the presence of 20,000 reaction sites. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to provide a fluid dispenser to convey an amount less than 0.5 microliters to the reactions sites, thereby reducing the amount of sample necessary for analysis and further provide a high number of reaction sites to increase the throughput and number of testing which may be conducted simultaneously thereby making the process more efficient. Further, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Allowable Subject Matter

5. Claims 1-54 are allowed.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Webb; Peter G.; Clarke; Mark S. F. et al.; Clark; David D. et al.; Velghe; Franck et al.; Bogen; Steven A. et al.; Ishihara; Naruhito et al.; Andersson; Lars;

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Sheppard, Jr.; Norman F. et al.; Karunaratne; Arjuna R. et al.; Kegelman; Joseph Edward et al.; Hutchins; Burleigh M. et al.; Wang; Mark S. et al.; Babson; Arthur L. et al.; Bell; Charles A. et al.; Watts; Richard P. et al.; Copeland; Keith G. et al.; Kelton; Arden A. et al.; Heidt; Thomas et al.; Holen; James T. et al.; Laska; Paul F. et al.; and Duff; Ian David disclose devices including rotatable substrates and dispensing devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, Telework Thurs., 1st Fri. Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Brian R Gordon
Primary Examiner
Art Unit 1743

BRIAN R. GORDON
PRIMARY EXAMINER